



PROPOSED RULE MAKING

CR-102 (January 2009)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Department of Ecology AO# 07-12

- ☒ **Preproposal Statement of Inquiry** was filed as WSR 07-21-110 _____ ; or
☐ **Expedited Rule Making--Proposed notice** was filed as WSR _____ ; or
☐ **Proposal is exempt under RCW 34.05.310(4).**

- ☒ **Original Notice**
☐ **Supplemental Notice to WSR** _____
☐ **Continuance of WSR** _____

Title of rule and other identifying information: (Describe Subject) Dangerous Waste Regulations, chapter 173-303 WAC

Hearing location(s): Video conference hearings will be held Simultaneously at the following locations: See attached.

Date: February 24, 2009 Time: 1 pm

Date of intended adoption: May 22, 2009
 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Robert Rieck
 Address: PO Box 47600
 Olympia, WA. 98504-7600
 e-mail rori461@ecy.wa.gov
 fax (360-) 407-6715 by (date) March 5, 2009

Assistance for persons with disabilities: Contact

Marnie Black by February 16, 2009

TTY (800) 833-8973 or (360) 407-6759

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Dangerous Waste Regulations set forth the requirements for determining if solid wastes are dangerous wastes, establish a system for tracking dangerous waste from initial generation to treatment or disposal, and establish requirements for facilities so that all dangerous wastes are managed safely and responsibly in Washington state. The proposed amendments will bring the state regulations current with federal requirements, and will update other requirements including Biological and Chemical Testing Methods.

Reasons supporting proposal: See attached

Statutory authority for adoption: chapters 70.105, 70.105D, and 15.54 RCW

Statute being implemented: chapter 70.105 RCW

Is rule necessary because of a:

- Federal Law? ☒ Yes ☐ No
 Federal Court Decision? ☐ Yes ☒ No
 State Court Decision? ☐ Yes ☒ No
 If yes, CITATION: 40 CFR Parts 260 through 279

DATE
 1/13/09

NAME (type or print)
 Polly Zehm

SIGNATURE

Polly Zehm

TITLE Assistant Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: January 15, 2009

TIME: 10:48 AM

WSR 09-03-073

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Department of Ecology

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Robert Rieck	Lacey, WA	(360) 407-6751
Implementation....	Darin Rice	Lacey, WA	(360) 407-6702
Enforcement.....	Darin Rice	Lacey, WA	(360) 407-6702

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name: Robert Rieck

Address: PO Box 47600 Olympia, WA. 98504-7600

phone (360) 407-6751

fax (360)407-6715

e-mail rori461@ecy.wa.gov

Is a cost-benefit analysis required under RCW 34.05.328?

☒ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Robert Rieck

Address: PO Box 47600 Olympia, WA. 98504-6700

phone (360-) 407-6751

fax (360)407-6715

e-mail rori461@ecy.wa.gov

☐ No: Please explain:

Attachment – Hearings

Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503
Phone: (360) 407-6000
Auditorium ROA-32

Department of Ecology Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
Phone: (425) 649-7000
Room 2A

Department of Ecology Central Regional Office,
15 W Yakima Avenue
Yakima, WA 98902
Phone: (509) 575-2490
Sundance Room

Department of Ecology Eastern Regional Office
4601 North Monroe Street
Spokane, WA 99205
Phone: (509) 329-3400
Room 1-SW-11

Proposed Amendments related to Federal rules:

Ecology is proposing to adopt several federal hazardous waste rules into the state Dangerous Waste Regulations. Several are proposed with language identical to the federal rule. Others are proposed with differences between the state and federal version. The rule titles and Federal Register reference of the federal hazardous waste rule proposed for adoption are listed below. The text of the summary paragraphs that appeared in the Federal Register was included in Ecology's public draft that was available for review fall of 2007. However, due to space constraints, only the titles and dates of the federal rules appear below. More detailed information appears on Ecology's website with the text of the proposed rule or may be obtained from the department.

Federal hazardous waste rules proposed for adoption essentially unchanged from the federal version include the following: **1)** National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks April 26, 2004 - 69 FR 22601 **2)** Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Dyes and/or Pigments Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Designation of Five Chemicals as Appendix VIII Constituents; Addition of Four Chemicals to the Treatment Standards of F039 and the Universal Treatment Standards February 24, 2005 - 70 FR 9137 **3)** Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Dyes and/or Pigments Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Designation of Five Chemicals as Appendix VIII Constituents; Addition of Four Chemicals to the Treatment Standards of F039 and the Universal Treatment Standards; Correction June 16, 2005 - 70 FR 35032 **4)** National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) October 12, 2005 - 70 FR 59402 **5)** National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Amendments April 8, 2008 - 73 FR 18970 **6)** Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations July 14, 2006 - 70 FR 40253 **7)** Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury-containing Equipment August 5, 2005 - 70 FR 45507 **8)** Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Correction June 16, 2005 - 70 FR 35034 **9)** Waste Management System; Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW-846 Final Update IIIB - August 1, 2005 70 FR 146

The following federal regulations that are proposed for adoption either contain differences from the federal version or have extra explanatory information. **10)** Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards – July 30, 2003 – 68 FR 44659 **11)** Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System March 4, 2005 – 70 FR 10775 **12)** Waste Management System; Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW-846 Final Update IIIB June 14, 2005 - 70 FR 34537 **13)** Resource Conservation and Recovery Act Burden Reduction Initiative April 4, 2006 - 70 FR 16861

Other proposed amendments not related to federal rules:

Ecology is proposing other amendments not related to the federal rules listed above. Several editorial and technical corrections and clarifications are being made including correcting citations, improved definitions, clarify that counting exclusion applies to permit by rule (PBR), updating of several test methods, minor changes to financial assurance rules, updates for consistency with federal regulations and several other minor technical corrections. Several of the more significant changes are described below. More detailed explanations are available from Ecology.

Changes are also being made to update the publications Chemical Test Methods for Designating Dangerous Waste and Biological Test Methods. The draft changes are available for review in a separate document on Ecology's website with the other rule information.

WAC 173-303-100(5)(b)(i). Two additional toxicity data sources are proposed to be added for state criteria designation (ECOTOX and HSDB). This will make information on aquatic toxicity more readily available and at no cost to the generator.

WAC 173-303-104(5) and 108(5). The new federal manifest rule does not allow the use of lab pack codes, so this change stops the use of Lab Pack Codes on manifests.

WAC 173-303-110(3)(b) Biological Testing Methods 80-12. The document was updated to make it clearer and to remove outdated information. The test procedure for determining percent solids was eliminated since the percent moisture value is not used by this method.

WAC 173-303-110(3)(c) Chemical Testing Methods Update. Chemical Test Methods was revised to make it easier to understand and use. Language was added to clarify that analytical test results must be reported on a dry weight basis. In addition, ecology added an additional method that can be used to meet state-only persistence designation requirements. The document is being split into sections on waste designation and on analytical methods.

WAC 173-303-282(2)(b)(v), -282(3)(p) and -902(2)(c)(i)-(vi). This amendment would change permit pre-application requirements pertaining to siting criteria. Recycling facilities that meet several important limitations would be exempt from siting criteria and from the need to enter into citizen/proponent negotiations. Also, certain existing TSDs seeking a significant expansion would be exempt from citizen/proponent negotiations. These limitations for recycling facilities provide environmental safeguards:

- Recycling is done in a process exempt from dangerous waste permitting.
- Waste storage is used strictly to support the exempt recycling.
- Waste storage is in tanks, containers, or containment building.
- Waste storage is indoors.

Finally, the rule change clarifies that a 25% facility expansion means an increase in the waste “storage design capacity” as described in the facility’s original Part A permit application or the previously approved significant expansion. The current regulation refers to “process design capacity” instead of “storage design capacity.”

WAC 173-303-506(3)(vii). These corrections will make CFC recyclers responsible for closure and financial assurance, consistent with other recyclers. CFC Recyclers had inadvertently been left out of closure and financial assurance requirements, in effect since 2005.

WAC 173-303-620(4)(c). This rule amendment allows a new optional financial assurance instrument for used oil processors and recyclers, termed an “assigned security deposit”. This new option makes it easier for these facilities to obtain financial assurance, ensuring that the public is protected from paying spill clean-up costs.